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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,671	04/27/2006	Andreas Haug	D4700-00397	3699

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DUANE MORRIS LLP - Philadelphia
IP DEPARTMENT
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103-4196

EXAMINER

YOKAY, ERIN P

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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03/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/538,671	Applicant(s) HAUG ET AL.	
	Examiner ERIN YOKAY	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 09 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 April 2006 is/are: a) ☒ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/17/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, in Claim 12, the arm that does not constitute a fork, must be shown or the feature(s) canceled from the claim(s). Also Claim 10 recites that the tensioning component is configured so that it does not contact the housing of the shower head, this must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. There is no description in the specification that explains how the device would work without having the tensioning component touch the shower head.

3. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. There is no description in the specification that explains how the shower mount could work with a single arm as opposed to the disclosed arm with tines.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being vague and indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because in Claim 1, a “holder” could vary substantially, as the holder is never fully described as what it is or comprises of. It is unclear as to what structural features the term “holder” includes or excludes. In Claim 1, “unrecognizable as a shower head mounting” could vary substantially. It is unclear as to what structural features the term “unrecognizable as a shower head mounting” includes or excludes. In Claim 14, “disk-shaped” could vary substantially. It is unclear as to what structural features the term “disk-shaped” includes or excludes.

6. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being vague and indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because a

Double Patenting

Claims 1-14 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the design claims (Figures 1-6) of U.S. Patent No. D492,004 to Haug. Although the conflicting claims are not identical, they are not patentably distinct from each other because Haug claims a wall mounting for a detachable shower head. Regarding Claims 1 and 2, a holder

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for engaging a shower head through interference fit is claimed and it is shown in Fig. 1. It is also shown that the shower head is unrecognizable as going into a shower mount which could also be seen in Fig. 1. Claim 3 claims that the holder grips the outer perimeter of the shower holder, shown in Fig. 1. As for Claim 4, it would be obvious that the shower head remains functional when removed because the design claim teaches in the written part of the claim that the mount is for hand showers which are functional on their own. Claim 5 claims that the holder engages two diametrically opposed locations on the shower head, which is shown in Fig. 6. Fig. 7 shows the description of jaws in Claim 6. Claim 7 discusses the jaws being drawn toward one another when the shower head is in place, although this is not specifically shown, it would be obvious that they are drawn toward one another as opposed to drawn away from one another, which would prevent the shower head from being held in place. It is obvious to one of ordinary skill in the art to conclude that there is tension on the component holding the shower head, as discussed in Claim 8, because the shower head is displacing the jaws, creating tension. Fig. 7 also shows that the tensioning component is configured to contact the shower head over an extended area, As in Claim 9. Claim 11 claims that the shower head is arranged between tines of a fork, which is shown in Fig. 7. Fig. 6 shows that the shower head is in the shape of a shower head and has a grip handle, as claimed in Claim 13. Claim 14 states that the shower head is disc shaped, it is shown that is at least in part the shape of a disk, as shown in Fig. 6.

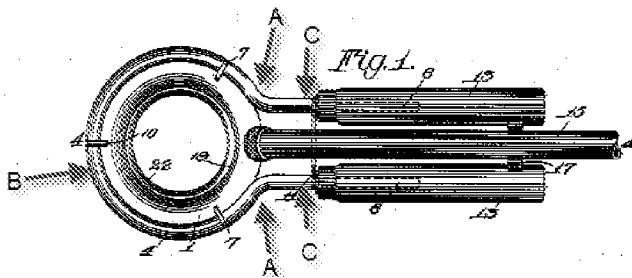
Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 1,078,283 to Hilfiker.



Regarding Claims 1-14, Hilfiker discloses a wall mounting for a detachable shower head 1. It comprises a holder 4 for the shower head 1. The holder works through interference fit, by engaging the outer perimeter of the shower head housing 1. The housing is 'unrecognizable' as being shaped for the mount. The shower head is shaped for this purpose. The shower head remains functional when removed from the holder. The holder engages diametrically opposed points on the shower head. There is a pair of jaws A gripping the shower head. The jaws are drawn together when the shower head is in place (lines 78-91). The pair of

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jaws is joined to the holder by a component under tension B. The tension component contacts the shower head over an 'extended' area. The holder is between tines of a fork C. The shower head 1 is in the shape of a shower head and is disc-shaped. The shower head also has a grip 15/16.

9. Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,091,998 to Peterson.

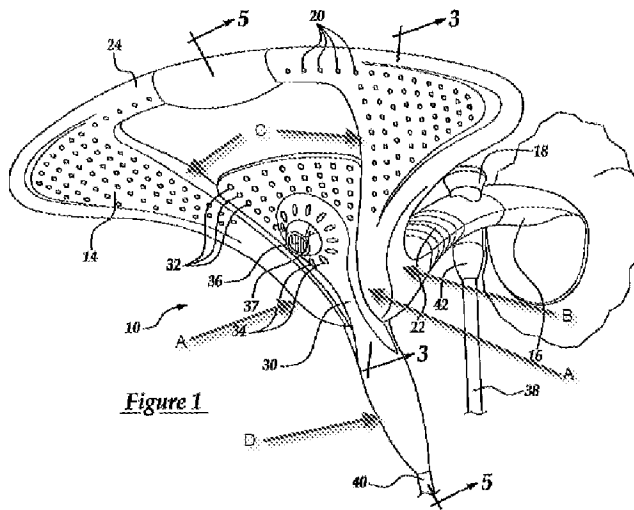
Regarding Claims 1-14, Peterson discloses a wall mounting for a detachable shower head 22. It comprises a holder 10 for the shower head 22. The holder works through interference fit, by engaging the outer perimeter 34/36 of the shower head housing 22. The housing is 'unrecognizable' as being shaped for the mount. The shower head is shaped for this purpose. The mount engages two locations 34/36 that are opposing one another on the shower head. The holder has a pair of jaws 82/84 for gripping the shower head 22 that are drawn together when the shower head is in place. The jaws are joined together by a component 42 under tension. The tension component 42 contacts the shower head over an 'extended area'. The shower head remains operational when withdrawn from the mounting. The holder is arranged between tines of a fork 72/74. The shower head is shaped in the form of a shower head and includes a grip. The housing of the shower head is disc shaped.

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10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by US Provisional Patent Application No. 60/517,683 to Lev.



Regarding Claims 1-14, Lev discloses a wall mounting for a detachable shower head 30. It comprises a holder for the shower head 30. The holder works through interference fit, by engaging the outer perimeter of the shower head housing. The housing is 'unrecognizable' as being shaped for the mount. The shower head is shaped for this purpose. The shower head remains functional when removed from the holder. The holder engaged diametrically opposed points

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on the shower head. There is a pair of jaws A gripping the shower head. The jaws are drawn together when the shower head is in place. The pair of jaws is joined to the holder by a component under tension B. The tension component contacts the shower head over an 'extended' area. The holder is between tines of a fork C. The shower head 30 is in the shape of a shower head and is disc-shaped. The shower head also has a grip D.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIN YOKAY whose telephone number is (571)270-7429. The examiner can normally be reached on Monday through Thursday 7:30-5:00, Every other Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EY

/Gregory L. Huson/
Supervisory Patent Examiner, Art Unit 3751